

cc: DREW
page

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 03 2022
at 12 o'clock and 23 min. P M
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
IN THE STATE OF HAWAII

TA Chey,
Plaintiff,

vs.

YHB HOSPITALITY GROUP, INC,
HAWAII KAI GOLF COURSE, YHB
HAWAII KAI, LLC, DOES 1-10,

Defendants

) Case No. **CV 22 00204 DKW**

WRP

**COMPLAINT FOR DAMAGES –
DEMAND FOR A JURY TRIAL**

- 1) PRIVATE NUISANCE
- 2) PUBLIC NUISANCE
- 3) TRESPASS
- 4) VIOLATION OF HRS §711-1101 –
OFFENSIVE AND RECKLESS
CONDUCT
- 5) NEGLIGENT INFILCTION OF
EMOTIONAL DISTRESS
- 6) VIOLATION OF HRS § 46-17
- 7) VIOLATION OF THE HAWAII
STATE CONSTITUTION
ARTICLE XI, SEC 9
- 8) FRAUD AND DECEIT
- 9) INTENTIONAL CIVIL AIDING
AND ABETTING
- 10) CIVIL CONSPIRACY
- 11) BREACH OF THE COVENANT
OF QUIET ENJOYMENT
- 12) BREACH OF DUTY OF CARE
- 13) VIOLATION OF RICO STATUTE
- 14) TRO / INJUNCTION
- 15) WRIT OF ATTACHMENT
- 16) PUNITIVE DAMAGES

DEMAND FOR A JURY TRIAL

1
2 Plaintiff, an individual, as for his Complaint against DEFENDANTS **YHB**
3
4 **HOSPITALITY GROUP, HAWAII KAI GOLF COURSE, YHB HAWAII KAI, LLC,**
5
6 DOES 1-10, inclusive demands a jury trial and alleges as follows:
7
8

9 **JURISDICTION AND VENUE**
10

- 11
12 1) This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
13 1391(b)(2), because a substantial part of the events or omissions giving rise to the claim
14 set forth in this action occurred within this district.
15
16 2) The Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C.
17 §1332 inasmuch as the Plaintiff is a resident of the state of Hawaii asserting damages in
18 this complaint in excess of \$75,000.00 and one of the Defendants is a California
19 Corporation.
20
21 3) This Court has personal jurisdiction over the parties in this action inasmuch as the
22 Defendant is a corporation that is authorized to conduct business within the jurisdictional
23 district of this court and it has intentionally availed itself of the laws and markets of
24 herein through promotion, marketing, and operation of its apartment properties within
25 this state.
26
27 4) Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), because a
28 substantial part of the events omissions giving rise to the Plaintiff's claims occurred in
this District. Venue is also proper pursuant to 18 U.S.C. § 1965(a), inasmuch as
Defendant transacts a substantial amount of business in this District.

5) At all times material hereto, Defendant was acting individually and/or through its agents,
servants, and employees who were acting on its behalf and with the scope and course of

1 its authority and employment.
2
3

- 4 6) Plaintiff is informed and believes, and thereon alleges, that each of the Defendants
5 was, at all times herein mentioned, the agent, lessee, resident, family member, or tenant
6 of and acting within the course and scope of such relationship. Plaintiff is further
7 informed and believes that each of the Defendants herein gave consent to, ratified and
8 authorized the illegal acts alleged herein to each of the remaining Defendants.
9
10 7) The true names and capacities of Defendants named herein as Does 1 through 20,
11 inclusive, whether individual, corporate, associate or otherwise are unknown to Plaintiff,
12 who therefore sues said Defendants by fictitious names pursuant to Hawaii Revised
13 Statute (HRS). Plaintiff will amend this Complaint to show such true names and
14 capacities of Does 1 through 20, inclusive, when they have been determined.
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INTRODUCTION

- 8) Noise pollution is the #1 problem facing all Hawaii residents and it's growing worse according to several studies.
- 9) Like frogs in hot water, Hawaii residents are becoming desensitized in dangerous ways to:
- a. Loud, Ear-Splitting car and moped mufflers at all hours;
 - b. Loud, Ear-Splitting illegal gas leaf blowers at all hours;
 - c. Loud, Ear-Splitting Illegal gardening at all hours at all hours.
- 10) Hawaii residents have reached the breaking point with noise pollution these days. They are extremely frustrated, lost, and angered. Noise pollution is the #1 problem facing all communities according to several polls. This case takes noise pollution to a new, horrific

1 low. It is based on a true story. Plaintiff believes it's time to fight back in the courts and
2 prays for justice in the courts and in front of a fair jury and an honorable Judge.
3
4

5 11) The EPA states that noise pollution adversely affects the lives of millions of people.
6
7

8 *Studies have shown that there are direct links between noise and health. Problems*
9 *related to noise include stress related illnesses, high blood pressure, speech interference,*
10 *hearing loss, sleep disruption, and lost productivity.* Exposure to constant or high levels
11 of noise can cause countless adverse health effects.
12
13

14 11) Defendant's decision to persist in causing this continuing nuisance at Plaintiffs' home
15 constitutes a willful, reckless, careless, wanton and wholly intentional violation of the
16 right of the Plaintiffs to the quiet use and enjoyment of their home. They were warned
17 and scoffed at the laws and ordinances of Hawaii courts, the Hawaii Health Dept, and the
18 Hawaii legislature.
19
20

21 12) **Living in peace and quiet in the morning is a HUMAN RIGHT.**
22
23

24 13) Defendants YHP Hospitality Group – based in California – and Defendant Hawaii Kai
25 Golf Course have brazenly violated every conceivable noise pollution by starting their
26 loud mowers at 5:50 am to 6:45 am in complete violation of the laws and ordinances of
27 the HRS, Hawaii Dept. of Health, the Hawaii Constitution, and the Honorable Hawaii
28 court decisions.
29

30 14) **Defendants do this every single morning. Without repentance. Without a single**
31 **concern about the neighbors.**
32

33 15) IMAGINE: the beauty and quiet of a peaceful morning in beautiful Hawaii – just the
34 sounds of quiet wisps of wind – then suddenly at 6 am – **LOUD, EAR-SPLITTING**
35 **noise from the gas-powered lawn mowers and other equipment begin.**
36

1 16) Plaintiff filed a police report (22-168342) at the Hawaii Kai Golf Course on April 30,
2
3 2022 with Officer Thom in District 7.

4
5 17) Yet Defendants brazenly continued violating the laws.

6
7 18) Plaintiffs have gun-smoking evidence of this in the form of videos taken and will
8 introduce them to the Court during discovery or during the Ex Parte hearings and
9 preliminary injunction and again asks the Court to SEVERELY sanction Defendants for
10 ignoring Plaintiff's requests to resolve this outside the Court.

11
12 19) Plaintiff is a Harvard and USC alumnus. He is a distinguished litigation attorney and
13 faith-based film producer.

14
15 20) Defendants have violated several ordinances from both the Hawaii legislature and the
16 Honorable Hawaii Courts – i.e., they're scofflaws and have no respect for the laws of the
17 state or the elderly people who are bullied every single morning.

18
19 21) Plaintiff reminds the Honorable Court that there are elderly residents in the Koko Kai
20 Villas and surrounding homes around the golf course that are disturbed by this horrific
21 noise.

22
23 22) Defendants have completely IGNORED all requests for resolution and now waste the
24 Honorable Court's time with this lawsuit. Defendants must be sanctioned and an
25 injunction placed as a deterrent to this continued behavior from noise terrorists on this
26 beautiful island.

27
28 23) The Hawaii State Department of Health defines maximum permissible sound levels in
29 Hawaii for both day and night as follows:

- **conservation or residential zones – 55 decibels day, 45 decibels night;**
- apartments or businesses zones – 60 decibels day, 50 decibels night;

- 1 • agricultural or industrial zones – 70 decibels day, 70 decibels night.
2
3

4) **The Defendant's noise pollution at 5:50 am is over 115 decibels (tested by sound**
5
6 **meters).**

7) Furthermore, the gas and fumes emitted are also illegal.

8) Regarding pollution control, the Hawaii State Constitution, Article XI, Sec. 9,
9
10 Environmental Rights, says in part, “Each person has the right to a clean and healthful
11
12 environment, as defined by laws relating to environmental quality, including control of
13
14 pollution ... ” Hawaii Revised Statutes, §342F-3, says in part, “ ... the director (of the
15
16 DOH) shall prevent, control, and abate noise pollution in the State.”

17
18 27) As a direct and proximate result of the wanton, reckless, and intentional conduct of the
19 Defendant, Plaintiffs have suffered and continue to suffer the loss of quiet use and
20
21 enjoyment of their property, including but not limited to the following:

- 22
23 a. Loss of the quiet use and enjoyment of their home;
24
25 b. Anxiety and stress from the circumstances resulting from the noise intrusion by
26 Defendant's operations;
27
28 c. Being forced from their home to conduct regular business activities such as
 phone calls, emails, prayers, or other home based business operations;
 d. Being prevented from using their deck or outdoor space for any period of time
 when gas-powered equipment is occurring due to unrelenting loud noise and
 vibration;
 e. Being subjected to constant vibrations of their home;
 f. Being subjected to unrelenting noise pollution as depicted in the annexed video
 and others like them;

- 1 g. Being subjected to days of unrelenting noise pollution seven days a week during
- 2 early morning and daylight hours;
- 3
- 4 h. Being subjected to unrelenting noise pollution in violation of local noise
- 5 ordinances, with no known recourse;
- 6
- 7 i. Being subjected to unrelenting noise pollution in violation of local noise
- 8 ordinances by Defendants, where Defendants clearly have no interest in complying
- 9 with local laws.

10
11 28) As a direct and proximate result of the conduct of the Defendant, the Plaintiffs have
12 suffered persistent noise pollution of both the interior of their home and their exterior
13 yard. WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their
14 favor and against Defendant in an amount in excess of Seventy-Five Thousand (\$75,000)
15 Dollars,
16
17 a. together with costs, punitive damages and any other relief the Court deems
18 appropriate.
19
20 29) Plaintiff and his wife now have to move from the house they just moved into which is a
21 total and complete nightmare. Plaintiff is owed at least \$240,000 in damages for moving.
22
23 30) Plaintiff is a staunch leader in consumer advocacy.
24
25 31) Plaintiff is filing this case to protect innocent people from having to go through what he
26 endured.
27

COUNT 1 **PRIVATE NUISANCE**

- 32) The preceding paragraphs are incorporated by reference herein.
33) As a result of the aforementioned acts, Defendant has created a private nuisance

1 condition.
2

3 34) A private nuisance is an interference with a person's enjoyment and use of the land. The
4 law recognizes that landowners, or those in rightful possession of the land, have the right
5 to enjoyment of their land free from disturbances that impair the enjoyment in any way.
6
7 35) The acts complained of above constitute a nuisance within the meaning of the HRS §521-
8 42 and Hawaii Admin Rules §12-46-6. Defendants had a legal duty to Plaintiff to use due
9 care to prevent and abate said nuisance. By committing the acts and omissions
10 complained of above, Defendants breached that duty.
11
12 36) Plaintiff have suffered harm from this nuisance while exercising the right common to the
13 general public, in the form of:
14
15 a. The right to clean air and quiet in the morning, and the preservation of the
16 natural, scenic, historic and aesthetic values of the environment under the Hawaii
17 Health code/manual
18
19 b. the right to exclusive possession and use of their property.
20
21 37) Plaintiffs suffered harm of a kind different from that suffered by other members of the
22 public, in the form of:
23
24 a. interference with the use and enjoyment of their Property due to the existence
25 of the noise pollution and gas emissions, and its migration into their home due to
26 Defendant's failure to properly respond to and remediate the noise pollution.
27
28 38) Defendant's aforementioned acts and omissions were committed in wanton, reckless and
outrageous disregard for the rights, safety and health of Plaintiffs.
39) Plaintiffs were significantly exposed to known and proven hazardous noise pollution
through the acts and omissions of Defendants.

40) WHEREFORE, Plaintiffs demand judgment of liability against Defendant,
compensatory damages for personal injury, compensatory damages for harms to real and
personal property, compensatory damages for diminution in property value, punitive
damages, costs of litigation including but not limited to attorneys fees, engineering fees,
expert witness fees, and interest and delay damages, and any other relief the Court deems
appropriate.

41) Plaintiff also seeks an emergency TRO /Preliminary injunction to prevent Defendant from continuing to disrupt Plaintiff's quiet enjoyment of his house.

42) As a further proximate result of the wrongful conduct of Defendants, Plaintiffs suffered a horrendous financial loss to his person and business and has been damaged in an aggregate amount to be determined at trial, in excess of the jurisdictional minimum of this court.

**COUNT 2
PUBLIC NUISANCE**

43) The preceding paragraphs are incorporated by reference herein.

44) Plaintiff have a possessory interest in the residences.

45) By knowingly and recklessly allowing loud noise near Hole 14 of Plaintiff's home, and by willfully failing and refusing to take reasonable measures to resolve said water contamination and to bring the units into a habitable condition, Defendants substantially and unreasonably interfered with Plaintiffs' and Class members' use and enjoyment of their homes.

46) The conduct of Defendants as described herein was knowing, willful, wanton,

1 reckless, and/or grossly negligent, and demonstrates a conscious disregard for the rights
2 of others.
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5 47) Plaintiff is therefore entitled to an award of punitive damages in an amount to be proved
6 at trial that is sufficient to adequately punish Defendants given their financial condition
7 and to deter them from such conduct in the future. Plaintiff has notified Defendant of the
8 disturbance. Nevertheless, Defendant has failed and or refused to resolve the issue
9 resulting in the plaintiff being forced to leave the premises and seek other residential
10 living arrangements.
11
12

13 48) As a direct and proximate result of the Defendant's acts and omissions, Plaintiff sustained
14 damages in the sum in excess of \$75,000.00, plus prejudgment interest at the legal rate
15 of 10% per annum. They will now have to pay \$240,000 to move to another home which
16 is tragic.
17
18

19 49) As a result of the aforementioned acts, Defendant has created a public nuisance
20 condition.
21
22

23 50) Plaintiff have suffered harm from this nuisance while exercising the right common to the
24 general public, in the form of:
25
26

- a. The right to clean air, quiet, and the preservation of the natural, scenic,
historic and aesthetic values of the environment under the Hawaii Revised Statutes;
- c. the right to exclusive possession and use of their property.

27 51) Plaintiffs suffered harm of a kind different from that suffered by other members of the
28 public, in the form of:
29
30

- a. interference with the use and enjoyment of their Property due to the existence
of the noise pollution, and its migration into their home due to Defendant's

failure to properly respond to and remediate the noise pollution.

52) Defendant's aforementioned acts and omissions were committed in wanton, reckless and
outrageous disregard for the rights, safety and health of Plaintiffs.

53) Plaintiffs were significantly exposed to known and proven hazardous noise pollution through the acts and omissions of Defendants.

54) WHEREFORE, Plaintiffs demand judgment of liability against Defendant,
compensatory damages for personal injury, compensatory damages for harms to real and
personal property, compensatory damages for diminution in property value, punitive
damages, costs of litigation including but not limited to attorneys fees, engineering fees,
expert witness fees, and interest and delay damages, and any other relief the Court deems
appropriate.

COUNT 3 TRESPASS

55) The preceding paragraphs are incorporated by reference herein.

56) Defendants, its agents, servants, and/or employees knowingly, recklessly and negligently caused the disruption of Plaintiffs use and enjoyment of their property, as detailed above and specifically by causing offensive noise pollution to continue for a period of years.

57) Defendant's aforesaid acts and omissions were committed in wanton, reckless and
outrageous disregard for the rights, safety and health of Plaintiffs.

58) WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in their favor and against Defendant in an amount in excess of Seventy-Five Thousand (\$75,000) Dollars, together with costs, punitive damages and any further relief the Court deems appropriate.

COUNT 4
VIOLATION OF HRS §711-1101 – OFFENSIVE
AND RECKLESS CONDUCT

59) The preceding paragraphs are incorporated by reference herein.

60) Hawaii Revised Statute §711-1101 reads:

§711-1101 Disorderly conduct. (1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

- (a) Engages in fighting or threatening, or in violent or **tumultuous behavior**;
 - (b) **Makes unreasonable noise;**
 - (c) Subjects another person to offensively coarse behavior or abusive language which is likely to provoke a violent response;
 - (d) Creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit; or
 - (e) Impedes or obstructs, for the purpose of begging or soliciting alms, any person in any public place or in any place open to the public.

(2) **Noise is unreasonable**, within the meaning of subsection (1)(b), if considering the nature and purpose of the person's conduct and the circumstances known to the person, including the nature of the location and the time of the day or night, the person's conduct involves a gross deviation from the standard of conduct that a law-abiding citizen would follow in the same situation; or the failure to heed the admonition of a police officer that the noise is unreasonable and should be stopped or reduced.

The renter, resident, or owner-occupant of the premises who knowingly or negligently consents to unreasonable noise on the premises shall be guilty of a noise violation.

61) Defendants YHP Hospitality Group – based in California – and Defendant Hawaii Kai Golf Course have brazenly violated every conceivable noise pollution by starting their loud mowers at 5:50 am to 6:45 am in complete violation of the laws and ordinances of the HRS, Hawaii Dept. of Health, the Hawaii Constitution, and the Honorable Hawaii court decisions.

1 62) **Defendants do this every single morning. Without repentance. Without a single**
2 **concern about the neighbors.**

3 63) IMAGINE: the beauty and quiet of a peaceful morning in beautiful Hawaii – just the
4 sounds of quiet wisps of wind – then suddenly at 6 am – **LOUD, EAR-SPLITTING**
5 **noise from the gas-powered lawn mowers and other equipment begin.**

6 64) Plaintiff filed a police report (22-168342) at the Hawaii Kai Golf Course on April 30,
7 2022 with Officer Thom in District 7.

8 65) Yet Defendants brazenly continued violating the laws.

9 66) Plaintiffs have gun-smoking evidence of this in the form of videos taken and will
10 introduce them to the Court during discovery or during the Ex Parte hearings and
11 preliminary injunction and again asks the Court to SEVERELY sanction Defendants for
12 ignoring Plaintiff's requests to resolve this outside the Court.

13 67) Plaintiff is a Harvard and USC alumnus. He is a distinguished litigation attorney and
14 faith-based film producer.

15 68) Defendants have violated several ordinances from both the Hawaii legislature and the
16 Honorable Hawaii Courts – i.e., they're scofflaws and have no respect for the laws of the
17 state or the elderly people who are bullied every single morning.

18 69) Plaintiff reminds the Honorable Court that there are elderly residents in the Koko Kai
19 Villas and surrounding homes around the golf course that are disturbed by this horrific
20 noise.

21 70) Defendants have completely IGNORED all requests for resolution and now waste the
22 Honorable Court's time with this lawsuit. Defendants must be sanctioned and an

1 injunction placed as a deterrent to this continued behavior from noise terrorists on this
2 beautiful island.
3

4 71) The Hawaii State Department of Health defines maximum permissible sound levels in
5 Hawaii for both day and night as follows:
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- 8
9
10 • **conservation or residential zones – 55 decibels day, 45 decibels night;**
11
12 • apartments or businesses zones – 60 decibels day, 50 decibels night;
13
14 • agricultural or industrial zones – 70 decibels day, 70 decibels night.
15
16

17 72) **The Defendant's noise pollution at 5:50 am is over 115 decibels (tested by sound**
18
19 **meters).**
20

21 73) Furthermore, the gas and fumes emitted are also illegal.
22

23 74) Regarding pollution control, the Hawaii State Constitution, Article XI, Sec. 9,
24 Environmental Rights, says in part, “Each person has the right to a clean and healthful
25 environment, as defined by laws relating to environmental quality, including control of
26 pollution ... ” Hawaii Revised Statutes, §342F-3, says in part, “ ... the director (of the
27 DOH) shall prevent, control, and abate noise pollution in the State.”
28

75) As a direct and proximate result of the wanton, reckless, and intentional conduct of the
Defendant, Plaintiffs have suffered and continue to suffer the loss of quiet use and
enjoyment of their property, including but not limited to the following:

- a. Loss of the quiet use and enjoyment of their home;
- b. Anxiety and stress from the circumstances resulting from the noise intrusion by
Defendant's operations;
- c. Being forced from their home to conduct regular business activities such as

- 1 phone calls, emails, prayers, or other home based business operations;
- 2
- 3 d. Being prevented from using their deck or outdoor space for any period of time
- 4 when gas-powered equipment is occurring due to unrelenting loud noise and
- 5 vibration;
- 6
- 7 e. Being subjected to constant vibrations of their home;
- 8
- 9 f. Being subjected to unrelenting noise pollution as depicted in the annexed video
- 10 and others like them;
- 11
- 12 g. Being subjected to days of unrelenting noise pollution seven days a week during
- 13 early morning and daylight hours;
- 14
- 15 h. Being subjected to unrelenting noise pollution in violation of local noise
- 16 ordinances, with no known recourse;
- 17
- 18 i. Being subjected to unrelenting noise pollution in violation of local noise
- 19 ordinances by Defendants, where Defendants clearly have no interest in complying
- 20 with local laws.
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76) As a direct and proximate result of the conduct of the Defendant, the Plaintiffs have suffered persistent noise pollution of both the interior of their home and their exterior yard. WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendant in an amount in excess of Seventy-Five Thousand (\$75,000) Dollars,

- d. together with costs, punitive damages and any other relief the Court deems appropriate.

77) Plaintiff and his wife now have to move from the house they just moved into which is a total and complete nightmare.

78) Defendant's aforesaid acts and omissions were committed in wanton, reckless and
outrageous disregard for the rights, safety and health of Plaintiffs.

79) WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in their favor and against Defendant in an amount in excess of Seventy-Five Thousand (\$75,000) Dollars, together with costs, punitive damages and any further relief the Court deems appropriate.

COUNT 5
NEGLIGENT INFILCTION OF EMOTIONAL
DISTRESS

80) Plaintiff repeats and realleges each and every allegation contained in paragraphs above as if fully set forth herein.

81) The negligent acts of Defendant averred herein resulted in noise pollution of the Plaintiffs Property and into Plaintiffs' house.

82) Defendant's aforesaid acts and or omissions were committed in wanton, reckless and

outrageous disregard for the rights, safety and health of Plaintiffs, in light of the fact that Defendant was repeatedly placed on notice, repeatedly fined, and repeatedly persisted in its activities despite repeated findings that it had violated the law.

83) Plaintiffs were exposed to hazardous noise pollution at concentrations above applicable state and/or local standards, through the acts and or omissions of Defendant.

84) Defendants YHP Hospitality Group – based in California – and Defendant Hawaii Kai Golf Course have brazenly violated every conceivable noise pollution by starting their loud mowers at 5:50 am to 6:45 am in complete violation of the laws and ordinances of

the HRS, Hawaii Dept. of Health, the Hawaii Constitution, and the Honorable Hawaii court decisions.

85) Defendants do this every single morning. Without repentance. Without a single concern about the neighbors.

86) IMAGINE: the beauty and quiet of a peaceful morning in beautiful Hawaii – just the sounds of quiet wisps of wind – then suddenly at 6 am – **LOUD, EAR-SPLITTING** noise from the gas-powered lawn mowers and other equipment begin.

87) Plaintiff filed a police report (22-168342) at the Hawaii Kai Golf Course on April 30, 2022 with Officer Thom in District 7.

88) Yet Defendants brazenly continued violating the laws.

89) Plaintiffs have gun-smoking evidence of this in the form of videos taken and will introduce them to the Court during discovery or during the Ex Parte hearings and preliminary injunction and again asks the Court to SEVERELY sanction Defendants for ignoring Plaintiff's requests to resolve this outside the Court.

90) Plaintiff is a Harvard and USC alumnus. He is a distinguished litigation attorney and
faith-based film producer.

91) Defendants have violated several ordinances from both the Hawaii legislature and the Honorable Hawaii Courts – i.e., they’re scofflaws and have no respect for the laws of the state or the elderly people who are bullied every single morning.

92) Plaintiff reminds the Honorable Court that there are elderly residents in the Koko Kai Villas and surrounding homes around the golf course that are disturbed by this horrific noise.

93) Defendants have completely IGNORED all requests for resolution and now waste the Honorable Court's time with this lawsuit. Defendants must be sanctioned and an injunction placed as a deterrent to this continued behavior from noise terrorists on this beautiful island.

94) The Hawaii State Department of Health defines maximum permissible sound levels in Hawaii for both day and night as follows:

- **conservation or residential zones** – 55 decibels day, 45 decibels night;
 - apartments or businesses zones – 60 decibels day, 50 decibels night;
 - agricultural or industrial zones – 70 decibels day, 70 decibels night.

95) The Defendant's noise pollution at 5:50 am is over 115 decibels (tested by sound meters).

96) Furthermore, the gas and fumes emitted are also illegal.

97) Regarding pollution control, the Hawaii State Constitution, Article XI, Sec. 9,

Environmental Rights, says in part, “Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution … ” Hawaii Revised Statutes, §342F-3, says in part, “ … the director (of the DOH) shall prevent, control, and abate noise pollution in the State.”

98) As a direct and proximate result of the wanton, reckless, and intentional conduct of the Defendant, Plaintiffs have suffered and continue to suffer the loss of quiet use and enjoyment of their property, including but not limited to the following:

- a. Loss of the quiet use and enjoyment of their home;
 - b. Anxiety and stress from the circumstances resulting from the noise intrusion by

1 Defendant's operations;

2

3 c. Being forced from their home to conduct regular business activities such as

4 phone calls, emails, prayers, or other home based business operations;

5

6 d. Being prevented from using their deck or outdoor space for any period of time

7 when gas-powered equipment is occurring due to unrelenting loud noise and

8 vibration;

9

10 e. Being subjected to constant vibrations of their home;

11

12 f. Being subjected to unrelenting noise pollution as depicted in the annexed video

13 and others like them;

14

15 g. Being subjected to days of unrelenting noise pollution seven days a week during

16 early morning and daylight hours;

17

18 h. Being subjected to unrelenting noise pollution in violation of local noise

19 ordinances, with no known recourse;

20

21 i. Being subjected to unrelenting noise pollution in violation of local noise

22 ordinances by Defendants, where Defendants clearly have no interest in complying

23 with local laws.

24

25

26

27

28

99) Plaintiff and his wife now have to move from the house they just moved into which is a total and complete nightmare.

100) Defendant's aforesaid acts and omissions were committed in wanton, reckless and outrageous disregard for the rights, safety and health of Plaintiffs.

101) WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in their favor and against Defendant in an amount in excess of Seventy-Five Thousand (\$75,000)

1 Dollars, together with costs, punitive damages and any further relief the Court deems
2 appropriate.
3
4

5 **COUNT 6**
6 **VIOLATION OF HRS § 46-17**
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8

9
10 102) Plaintiff repeats and realleges each and every allegation contained in paragraphs
11 above as if fully set forth herein.
12
13 103) Hawaii Revised Statute **§46-17 reads:**
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17 **§46-17 Regulation of certain public nuisances.** Any provision of law to the contrary
18 notwithstanding, the council of any county may adopt and provide for the
19 enforcement of ordinances regulating or prohibiting noise, smoke, dust, vibration, or
20 odors which constitute a public nuisance. No such ordinance shall be held invalid on
21 the ground that it covers any subject or matter embraced within any statute or rule of
22 the State; provided that in any case of conflict between a statute or rule and an
23 ordinance, the law affording the most protection to the public shall apply, with the
24 exception that:
25
26

27 (1) An ordinance shall not be effective to the extent that it is inconsistent with any
28 permit for agricultural burning granted by the department of health under
authority of chapter 342B, or to the extent that it prohibits, subjects to fine or
injunction, or declares to be a public nuisance any agricultural burning conducted
in accordance with such a permit; and

(2) **An ordinance shall not be effective to the extent that it is inconsistent with
any noise rule adopted by the department of health under authority of
chapter 342F. [L 1974, c 158, §2; am L 1978, c 120, §1; am L 1994, c 5, §1;
am L 1999, c 265, §2] [Bolding mine]**

104) The negligent acts of Defendant averred herein resulted in noise pollution of the
Plaintiffs Property and into Plaintiffs' house.
105) Clearly Defendants violate the Department of Health's guidelines with impunity.

The Department's guidelines overrule any noise ordinance in place.

106) Defendant's aforesaid acts and or omissions were committed in wanton, reckless
and outrageous disregard for the rights, safety and health of Plaintiffs, in light of the fact
that Defendant was repeatedly placed on notice, repeatedly fined, and repeatedly
persisted in its activities despite repeated findings that it had violated the law.

107) Plaintiffs were exposed to hazardous noise pollution at concentrations above
applicable state and/or local standards, through the acts and or omissions of Defendant.

108) Defendants YHP Hospitality Group – based in California – and Defendant Hawaii Kai Golf Course have brazenly violated every conceivable noise pollution by starting their loud mowers at 5:50 am to 6:45 am in complete violation of the laws and ordinances of the HRS, Hawaii Dept. of Health, the Hawaii Constitution, and the Honorable Hawaii court decisions.

109) Defendants do this every single morning. Without repentance. Without a

single concern about the neighbors.

110) IMAGINE: the beauty and quiet of a peaceful morning in beautiful Hawaii – just the sounds of quiet wisps of wind – then suddenly at 6 am – **LOUD, EAR-SPLITTING** noise from the gas-powered lawn mowers and other equipment begin.

111) Plaintiff filed a police report (22-168342) at the Hawaii Kai Golf Course on April
30, 2022 with Officer Thom in District 7.

112) Yet Defendants brazenly continued violating the laws.

113) Plaintiffs have gun-smoking evidence of this in the form of videos taken and will introduce them to the Court during discovery or during the Ex Parte hearings and preliminary injunction and again asks the Court to SEVERELY sanction Defendants for ignoring Plaintiff's requests to resolve this outside the Court.

114) Plaintiff is a Harvard and USC alumnus. He is a distinguished litigation attorney
and faith-based film producer.

115) Defendants have violated several ordinances from both the Hawaii legislature and
the Honorable Hawaii Courts – i.e., they're scofflaws and have no respect for the laws of
the state or the elderly people who are bullied every single morning.

116) Plaintiff reminds the Honorable Court that there are elderly residents in the Koko Kai Villas and surrounding homes around the golf course that are disturbed by this horrific noise.

117) Defendants have completely IGNORED all requests for resolution and now waste
the Honorable Court's time with this lawsuit. Defendants must be sanctioned and an
injunction placed as a deterrent to this continued behavior from noise terrorists on this
beautiful island.

118) The Hawaii State Department of Health defines maximum permissible sound levels in Hawaii for both day and night as follows:

119) conservation or residential zones – 55 decibels day, 45 decibels night;

120) apartments or businesses zones – 60 decibels day, 50 decibels night;

121) agricultural or industrial zones – 70 decibels day, 70 decibels night.

122) The Defendant's noise pollution at 5:50 am is over 115 decibels (tested by sound meters).

123) Furthermore, the gas and fumes emitted are also illegal.

124) Regarding pollution control, the Hawaii State Constitution, Article XI, Sec. 9, Environmental Rights, says in part, "Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of

1 pollution ... " Hawaii Revised Statutes, §342F-3, says in part, " ... the director (of the
2 DOH) shall prevent, control, and abate noise pollution in the State."

3
4 125) As a direct and proximate result of the wanton, reckless, and intentional conduct
5 of the Defendant, Plaintiffs have suffered and continue to suffer the loss of quiet use and
6 enjoyment of their property, including but not limited to the following:
7
8

- 9 a. Loss of the quiet use and enjoyment of their home;
- 10 b. Anxiety and stress from the circumstances resulting from the noise intrusion by
11 Defendant's operations;
- 12 c. Being forced from their home to conduct regular business activities such as
13 phone calls, emails, prayers, or other home based business operations;
- 14 d. Being prevented from using their deck or outdoor space for any period of time
15 when gas-powered equipment is occurring due to unrelenting loud noise and
16 vibration;
- 17 e. Being subjected to constant vibrations of their home;
- 18 f. Being subjected to unrelenting noise pollution as depicted in the annexed video
19 and others like them;
- 20 g. Being subjected to days of unrelenting noise pollution seven days a week during
21 early morning and daylight hours;
- 22 h. Being subjected to unrelenting noise pollution in violation of local noise
23 ordinances, with no known recourse;
- 24 i. Being subjected to unrelenting noise pollution in violation of local noise
25 ordinances by Defendants, where Defendants clearly have no interest in complying
26 with local laws.

126) Plaintiff and his wife now have to move from the house they just moved into
which is a total and complete nightmare.

127) Defendant's aforesaid acts and omissions were committed in wanton, reckless and
outrageous disregard for the rights, safety and health of Plaintiffs.

128) WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in
their

favor and against Defendant in an amount in excess of Seventy-Five Thousand (\$75,000) Dollars, together with costs, punitive damages and any further relief the Court deems appropriate.

COUNT 7
VIOLATION OF THE HAWAII STATE
CONSTITUTION ARTICLE XI, SEC 9

129) Plaintiff repeats and realleges each and every allegation contained in paragraphs
above as if fully set forth herein.

130) The Hawaii State Constitution reads: the Hawaii State Constitution, Article XI, Sec. 9, Environmental Rights, says in part,

Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution ... ”

Hawaii Revised Statutes, §342F-3, says in part, “ ... the director (of the DOH) shall prevent, control, and abate noise pollution in the State.”

131) Noise pollution is the #1 problem facing all Hawaii residents and it's growing worse.

132) Like frogs in hot water, Hawaii residents are becoming desensitized in dangerous ways to:

- a. Loud, Ear-Splitting car and moped mufflers
 - b. Loud, Ear-Splitting illegal gas leaf blowers
 - c. Illegal gardening at all hours

133) Hawaii residents have reached the breaking point with noise pollution these days.

They are extremely frustrated, lost, and angered. Noise pollution is the #1 problem facing all communities according to several polls. This case takes noise pollution to a new, horrific low. It is based on a true story. Plaintiff believes it's time to fight back in the courts and prays for justice in the courts and in front of a fair jury and an honorable Judge.

134) The EPA states that noise pollution adversely affects the lives of millions of people.

135) *Studies have shown that there are direct links between noise and health. Problems related to noise include stress related illnesses, high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity.* Exposure to constant or high levels of noise can cause countless adverse health effects.

11) Defendant's decision to persist in causing this continuing nuisance at Plaintiffs' home constitutes a willful, reckless, careless, wanton and wholly intentional violation of the right of the Plaintiffs to the quiet use and enjoyment of their home. They were warned and scoffed at the laws and ordinances of Hawaii courts, the Hawaii Health Dept, and the Hawaii legislature.

136) Living in peace and quiet in the morning is a HUMAN RIGHT.

137) Defendants YHP Hospitality Group – based in California – and Defendant Hawaii Kai Golf Course have brazenly violated every conceivable noise pollution by starting their loud mowers at 5:50 am to 6:45 am in complete violation of the laws and ordinances of the HRS, Hawaii Dept. of Health, the Hawaii Constitution, and the Honorable Hawaii court decisions.

138) Defendants do this every single morning. Without repentance. Without a single concern about the neighbors.

139) IMAGINE: the beauty and quiet of a peaceful morning in beautiful Hawaii – just the sounds of quiet wisps of wind – then suddenly at 6 am – **LOUD, EAR-SPLITTING** **noise from the gas-powered lawn mowers and other equipment begin.**

140) Plaintiff filed a police report (22-168342) at the Hawaii Kai Golf Course on April
30, 2022 with Officer Thom in District 7.

141) Yet Defendants brazenly continued violating the laws.

142) Plaintiffs have gun-smoking evidence of this in the form of videos taken and will introduce them to the Court during discovery or during the Ex Parte hearings and preliminary injunction and again asks the Court to SEVERELY sanction Defendants for ignoring Plaintiff's requests to resolve this outside the Court.

143) Plaintiff is a Harvard and USC alumnus. He is a distinguished litigation attorney
and faith-based film producer.

144) Defendants have violated several ordinances from both the Hawaii legislature and
the Honorable Hawaii Courts – i.e., they're scofflaws and have no respect for the laws of
the state or the elderly people who are bullied every single morning.

1 145) Plaintiff reminds the Honorable Court that there are elderly residents in the Koko
2 Kai Villas and surrounding homes around the golf course that are disturbed by this
3 horrific noise.

4
5
6 146) Defendants have completely IGNORED all requests for resolution and now waste
7 the Honorable Court's time with this lawsuit. Defendants must be sanctioned and an
8 injunction placed as a deterrent to this continued behavior from noise terrorists on this
9 beautiful island.

10
11 147) The Hawaii State Department of Health defines maximum permissible sound
12 levels in Hawaii for both day and night as follows:

- 13
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18
19
20 • **conservation or residential zones – 55 decibels day, 45 decibels night;**
21
22 • apartments or businesses zones – 60 decibels day, 50 decibels night;
23
24 • agricultural or industrial zones – 70 decibels day, 70 decibels night.

25
26
27 148) **The Defendant's noise pollution at 5:50 am is over 115 decibels (tested by**
28 **sound meters).**

149) Furthermore, the gas and fumes emitted are also illegal.

150) As a direct and proximate result of the wanton, reckless, and intentional conduct
of the

Defendant, Plaintiffs have suffered and continue to suffer the loss of quiet use and
enjoyment of their property, including but not limited to the following:

- a. Loss of the quiet use and enjoyment of their home;
- b. Anxiety and stress from the circumstances resulting from the noise intrusion by
Defendant's operations;

- 1 c. Being forced from their home to conduct regular business activities such as
- 2 phone calls, emails, prayers, or other home based business operations;
- 3 d. Being prevented from using their deck or outdoor space for any period of time
- 4 when gas-powered equipment is occurring due to unrelenting loud noise and
- 5 vibration;
- 6 e. Being subjected to constant vibrations of their home;
- 7 f. Being subjected to unrelenting noise pollution as depicted in the annexed video
- 8 and others like them;
- 9 g. Being subjected to days of unrelenting noise pollution seven days a week during
- 10 early morning and daylight hours;
- 11 h. Being subjected to unrelenting noise pollution in violation of local noise
- 12 ordinances, with no known recourse;
- 13 i. Being subjected to unrelenting noise pollution in violation of local noise
- 14 ordinances by Defendants, where Defendants clearly have no interest in complying
- 15 with local laws.

151) As a direct and proximate result of the conduct of the Defendant, the Plaintiffs
have suffered persistent noise pollution of both the interior of their home and their
exterior yard. WHEREFORE, Plaintiffs respectfully request that the Court enter
judgment in their favor and against Defendant in an amount in excess of Seventy-Five
Thousand (\$75,000) Dollars,

- e. together with costs, punitive damages and any other relief the Court deems
appropriate.

152) Plaintiff and his wife now have to move from the house they just moved into
which is a total and complete nightmare. Plaintiff is owed at least \$240,000 in damages
for moving.

153) Plaintiff is a staunch leader in consumer advocacy.

154) Plaintiff is filing this case to protect innocent people from having to go through
what he endured.

COUNT 8 **FRAUD AND DECEIT**

- 1) Plaintiff repeats and realleges each and every allegation contained in paragraphs above as if fully set forth herein.
 - 2) This is a textbook case of fraud and deceit.
 - 3) Defendants have deceived the surrounding communities and the Hawaii Police Department into believing they are not violating any ordinances.
 - 4) They are.
 - 5) Plaintiff is irreparably harmed and punitive damages are sought to prevent Defendants from taking advantage of the public's ignorance in hoping to have a wonderful Hawaii residential stay turn to a nightmare. Plaintiff seeks punitive damages for this cause of action.

155) Hawaii residents have reached the breaking point with noise pollution these days.
They are extremely frustrated, lost, and angered. Noise pollution is the #1 problem facing all communities according to several polls. This case takes noise pollution to a new,
horrible low. It is based on a true story. Plaintiff believes it's time to fight back in the

courts and prays for justice in the courts and in front of a fair jury and an honorable Judge.

156) The EPA states that noise pollution adversely affects the lives of millions of people.

157) *Studies have shown that there are direct links between noise and health. Problems related to noise include stress related illnesses, high blood pressure, speech interference, hearing loss, sleep disruption, and lost productivity.* Exposure to constant or high levels of noise can cause countless adverse health effects.

11) Defendant's decision to persist in causing this continuing nuisance at Plaintiffs' home constitutes a willful, reckless, careless, wanton and wholly intentional violation of the right of the Plaintiffs to the quiet use and enjoyment of their home. They were warned and scoffed at the laws and ordinances of Hawaii courts, the Hawaii Health Dept, and the Hawaii legislature.

158) Living in peace and quiet in the morning is a HUMAN RIGHT.

159) Defendants YHP Hospitality Group – based in California – and Defendant Hawaii Kai Golf Course have brazenly violated every conceivable noise pollution by starting their loud mowers at 5:50 am in complete violation of the laws and ordinances of the HRS.

160) Defendants do this every single morning. Without repentance. Without a single concern about the neighbors.

161) IMAGINE: the beauty and quiet of a peaceful morning in beautiful Hawaii – just the sounds of quiet wisps of wind – then suddenly at 6 am – **LOUD, EAR-SPLITTING** noise from the gas-powered lawn mowers and other equipment begin.

1 162) Plaintiff filed a police report (22-168342) at the Hawaii Kai Golf Course on April
2
3 30, 2022 with Officer Thom in District 7.

4
5 163) Yet Defendants brazenly continued violating the laws.

6
7 164) Plaintiffs have gun-smoking evidence of this in the form of videos taken and will
8 introduce them to the Court during discovery or during the Ex Parte hearings and
9 preliminary injunction and again asks the Court to SEVERELY sanction Defendants for
10 ignoring Plaintiff's requests to resolve this outside the Court.

11
12 165) Plaintiff is a Harvard and USC alumnus. He is a distinguished litigation attorney
13 and faith-based film producer.

14
15 166) Defendants have violated several ordinances from both the Hawaii legislature and
16 the Honorable Hawaii Courts – i.e., they're scofflaws and have no respect for the laws of
17 the state or the elderly people who are bullied every single morning.

18
19 167) Plaintiff reminds the Honorable Court that there are elderly residents in the Koko
20 Kai Villas and surrounding homes around the golf course that are disturbed by this
21 horrific noise.

22
23 168) Defendants have completely IGNORED all requests for resolution and now waste
24 the Honorable Court's time with this lawsuit. Defendants must be sanctioned and an
25 injunction placed as a deterrent to this continued behavior from noise terrorists on this
26 beautiful island.

27
28 169) The Hawaii State Department of Health defines maximum permissible sound
29 levels in Hawaii for both day and night as follows:

- **conservation or residential zones – 55 decibels day, 45 decibels night;**
- apartments or businesses zones – 60 decibels day, 50 decibels night;

- 1 • agricultural or industrial zones – 70 decibels day, 70 decibels night.
2
3

4 **170) The Defendant's noise pollution at 5:50 am is over 115 decibels (tested by**
5 **sound meters).**

6 **171) Furthermore, the gas and fumes emitted are also illegal.**

7 **172) As a direct and proximate result of the wanton, reckless, and intentional conduct**
8 **of the**

9
10 Defendant, Plaintiffs have suffered and continue to suffer the loss of quiet use and
11 enjoyment of their property, including but not limited to the following:

- 12 a. Loss of the quiet use and enjoyment of their home;
13
14 b. Anxiety and stress from the circumstances resulting from the noise intrusion by
15 Defendant's operations;
16
17 c. Being forced from their home to conduct regular business activities such as
18 phone calls, emails, prayers, or other home based business operations;
19
20 d. Being prevented from using their deck or outdoor space for any period of time
21 when gas-powered equipment is occurring due to unrelenting loud noise and
22 vibration;
23
24 e. Being subjected to constant vibrations of their home;
25
26 f. Being subjected to unrelenting noise pollution as depicted in the annexed video
27 and others like them;
28
29 g. Being subjected to days of unrelenting noise pollution seven days a week during
30 early morning and daylight hours;
31
32 h. Being subjected to unrelenting noise pollution in violation of local noise
33 ordinances, with no known recourse;

1 i. Being subjected to unrelenting noise pollution in violation of local noise
2 ordinances by Defendants, where Defendants clearly have no interest in complying
3 with local laws.

4
5
6 173) As a direct and proximate result of the conduct of the Defendant, the Plaintiffs
7 have suffered persistent noise pollution of both the interior of their home and their
8 exterior yard. WHEREFORE, Plaintiffs respectfully request that the Court enter
9 judgment in their favor and against Defendant in an amount in excess of Seventy-Five
10 14
11 15 Thousand (\$75,000) Dollars,

12
13 16 f. together with costs, punitive damages and any other relief the Court deems
14 appropriate.

15
16 174) Plaintiff and his wife now have to move from the house they just moved into
17 which is a total and complete nightmare. Plaintiff is owed at least \$240,000 in damages
18 for moving.

19
20 175) Plaintiff is a staunch leader in consumer advocacy.

21
22 176) Plaintiff is filing this case to protect innocent people from having to go through
23 what he endured.

COUNT 9

INTENTIONAL CIVIL AIDING AND

ABETTING

24
25 177) Plaintiff repeats and realleges each and every allegation contained in paragraphs
26 above as if fully set forth herein.

27
28 178) A person or company who aids and abets the commission of a crime when he or
she: [¶] (1) With knowledge of the unlawful purpose of the perpetrator, and [¶] (2) With
the intent or purpose of committing or encouraging or facilitating the commission of the

crime, and [¶] (3) By act or advice aids, promotes, encourages or instigates the commission of the crime. [¶] A person who aids and abets the commission of a crime.

179) It is clear Defendants know they are breaking the law.

180) Plaintiff have suffered harm from this nuisance while exercising the right
common to the general public, in the form of:

a. The right to clean air and quiet in the morning, and the preservation of the natural, scenic, historic and aesthetic values of the environment under the Hawaii Health code/manual

g. the right to exclusive possession and use of their property.

181) Plaintiffs suffered harm of a kind different from that suffered by other members
of the

public, in the form of:

a. interference with the use and enjoyment of their Property due to the existence of the noise pollution and gas emissions, and its migration into their home due to Defendant's failure to properly respond to and remediate the noise pollution.

a. Defendant's aforementioned acts and omissions were committed in wanton, reckless and outrageous disregard for the rights, safety and health of Plaintiffs.

182) Plaintiffs were significantly exposed to known and proven hazardous noise
pollution through the acts and omissions of Defendants.

183) WHEREFORE, Plaintiffs demand judgment of liability against Defendant,
compensatory damages for personal injury, compensatory damages for harms to real and
personal property, compensatory damages for diminution in property value, punitive
damages, costs of litigation including but not limited to attorneys fees, engineering fees,

1 expert witness fees, and interest and delay damages, and any other relief the Court deems
2 appropriate.
3
4

5 184) Plaintiff also seeks an emergency TRO /Preliminary injunction to prevent
6 Defendant from continuing to disrupt Plaintiff's quiet enjoyment of his house.
7
8

9 **COUNT 10**
10 **CIVIL CONSPIRACY**
11
12

13 185) Plaintiff repeats and realleges each and every allegation contained in paragraphs
14 above as if fully set forth herein.
15
16

17 186) A conspiracy claim consists of (1) a combination of two or more persons acting
18 with a common purpose to do an unlawful act or to do a lawful act by unlawful means or
19 for an unlawful purpose; (2) an overt act done in pursuance of common purpose; and (3)
20 actual legal damage;
21
22

23 187) Plaintiffs believe and allege that Defendant's refusal to obey the law and
24 dismissal of Plaintiff's concerns is one of several acts of conspiracy.
25
26

27 188) Plaintiffs are innocent victims who now must move from their home if the Court
28 does not issue a TRO/Injunction. They are also the victims of careless, mean-spirited,
actual legal damage;
vicious, and unprofessional conduct by Defendants.

189) As a result of Defendant willful illegal conduct, and gross negligence, Defendants
caused Plaintiff to be exposed to LOUD NOISE at 6 am and harmful air and bacteria
particles further causing Plaintiffs to suffer risk of, or actual, physical injuries and
immense, incalculable mental anguish.

COUNT 11
VIOLATION OF THE QUIET ENJOYMENT
STATUTE

1
2 190) Plaintiff repeats and realleges each and every allegation contained in paragraphs
3
4 above as if fully set forth herein.

5
6 191) The covenant of Quiet Enjoyment statute in Hawaii (HI Rev Stat § 521-3 (2013))
7 includes: 1) A reasonable expectation of peace, quiet, and solitude; 2) Freedom from
8 disturbances such as loud noises, fire, smoke and other nuisances

9
10 192) It is apparent that Defendants have completely violated (HI Rev Stat § 521-3
11 (2013) by refusing to take precautions against the early-morning nosie and by refusing to
12 hear and ignore Plaintiff's concerns in a timely manner.

13
14 193) The outrageous conduct of Defendants in breaking the law is unprecedented and
15 cannot be tolerated and makes a mockery of Hawaii leadership and the Courts.

16
17 194) As a result of Defendant's willful illegal conduct, and gross negligence,
18 Defendants further caused Plaintiff to be exposed to LOUD AND HARMFUL NOISE,
19 harmful air and bacteria particles further causing Plaintiff to suffer risk of, or actual,
20 physical injuries and immense, incalculable mental anguish.

21
22 195) Plaintiff requests the court to expedite discovery at all ends and set a trial date for
23 early-2023.

COUNT 12 **BREACH OF DUTY OF CARE**

196) Plaintiff repeats and realleges each and every allegation contained in paragraphs
above as if fully set forth herein.

197) The negligent acts of Defendant averred herein resulted in noise pollution of the
Plaintiffs Property and into Plaintiffs' house.

198) Defendants clearly breached the duty of care owed to the surrounding neighborhood filled with elderly citizens who don't deserve this horrific elder abuse.

199) Defendant's aforesaid acts and or omissions were committed in wanton, reckless
and outrageous disregard for the rights, safety and health of Plaintiffs, in light of the fact
that Defendant was repeatedly placed on notice, repeatedly fined, and repeatedly
persisted in its activities despite repeated findings that it had violated the law.

200) Plaintiffs were exposed to hazardous noise pollution at concentrations above applicable state and/or local standards, through the acts and or omissions of Defendant.

201) Defendants YHP Hospitality Group – based in California – and Defendant Hawaii Kai Golf Course have brazenly violated every conceivable noise pollution by starting their loud mowers at 5:50 am to 6:45 am in complete violation of the laws and ordinances of the HRS, Hawaii Dept. of Health, the Hawaii Constitution, and the Honorable Hawaii court decisions.

202) Defendants do this every single morning. Without repentance. Without a single concern about the neighbors.

203) IMAGINE: the beauty and quiet of a peaceful morning in beautiful Hawaii – just the sounds of quiet wisps of wind – then suddenly at 6 am – **LOUD, EAR-SPLITTING** noise from the gas-powered lawn mowers and other equipment begin.

204) Plaintiff filed a police report (22-168342) at the Hawaii Kai Golf Course on April
30, 2022 with Officer Thom in District 7.

205) Yet Defendants brazenly continued violating the laws.

206) Plaintiffs have gun-smoking evidence of this in the form of videos taken and will introduce them to the Court during discovery or during the Ex Parte hearings and

1 preliminary injunction and again asks the Court to SEVERELY sanction Defendants for
2 ignoring Plaintiff's requests to resolve this outside the Court.
3

4 207) Plaintiff is a Harvard and USC alumnus. He is a distinguished litigation attorney
5 and faith-based film producer.
6

7 208) Defendants have violated several ordinances from both the Hawaii legislature and
8 the Honorable Hawaii Courts – i.e., they're scofflaws and have no respect for the laws of
9 the state or the elderly people who are bullied every single morning.
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11 209) Plaintiff reminds the Honorable Court that there are elderly residents in the Koko
12 Kai Villas and surrounding homes around the golf course that are disturbed by this
13 horrific noise.
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15 210) Defendants have completely IGNORED all requests for resolution and now waste
16 the Honorable Court's time with this lawsuit. Defendants must be sanctioned and an
17 injunction placed as a deterrent to this continued behavior from noise terrorists on this
18 beautiful island.
19

20 211) The Hawaii State Department of Health defines maximum permissible sound
21 levels in Hawaii for both day and night as follows:
22

- **conservation or residential zones – 55 decibels day, 45 decibels night;**
- apartments or businesses zones – 60 decibels day, 50 decibels night;
- agricultural or industrial zones – 70 decibels day, 70 decibels night.

23 212) **The Defendant's noise pollution at 5:50 am is over 115 decibels (tested by**
24 **sound meters).**
25

26 213) **Furthermore, the gas and fumes emitted are also illegal.**
27

1 214) Regarding pollution control, the Hawaii State Constitution, Article XI, Sec. 9,
2
3 Environmental Rights, says in part, “Each person has the right to a clean and healthful
4 environment, as defined by laws relating to environmental quality, including control of
5 pollution ... ” Hawaii Revised Statutes, §342F-3, says in part, “ ... the director (of the
6
7 DOH) shall prevent, control, and abate noise pollution in the State.”
8
9

10 215) As a direct and proximate result of the wanton, reckless, and intentional conduct
11 of the Defendant, Plaintiffs have suffered and continue to suffer the loss of quiet use and
12 enjoyment of their property, including but not limited to the following:
13
14

- 15 a. Loss of the quiet use and enjoyment of their home;
- 16
17 b. Anxiety and stress from the circumstances resulting from the noise intrusion by
18 Defendant's operations;
- 19
20 c. Being forced from their home to conduct regular business activities such as
21 phone calls, emails, prayers, or other home based business operations;
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23 d. Being prevented from using their deck or outdoor space for any period of time
24 when gas-powered equipment is occurring due to unrelenting loud noise and
25 vibration;
- 26
27 e. Being subjected to constant vibrations of their home;
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29 f. Being subjected to unrelenting noise pollution as depicted in the annexed video
30 and others like them;
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32 g. Being subjected to days of unrelenting noise pollution seven days a week during
33 early morning and daylight hours;
- 34
35 h. Being subjected to unrelenting noise pollution in violation of local noise
36 ordinances, with no known recourse;

1 i. Being subjected to unrelenting noise pollution in violation of local noise
2 ordinances by Defendants, where Defendants clearly have no interest in complying
3 with local laws.

4
5
6 216) Plaintiff and his wife now have to move from the house they just moved into
7 which is a total and complete nightmare.

8
9
10 217) Defendant's aforesaid acts and omissions were committed in wanton, reckless and
11 outrageous disregard for the rights, safety and health of Plaintiffs.

12
13
14 218) WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in
15 their favor and against Defendant in an amount in excess of Seventy-Five Thousand
16 (\$75,000) Dollars, together with costs, punitive damages and any further relief the Court
17 deems appropriate.

18
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23
24 **COUNT 13**
25 **VIOLATION OF RICO STATUTE**

26
27
28 219) Plaintiffs repeats and realleges each and every allegation contained in paragraphs
 above as if fully set forth herein.

29
30 220) Defendants, collectively, are an enterprise that is engaged in interstate commerce
 within the United States through the internet presence on the worldwide web and through
 their criminal activities of actively violating the noise ordinances. Defendants are funded
 with money that include proceeds from these illegal activities. Plaintiff believes, after
 discovery, that Defendants operates these criminal activities in more than one golf course.

31
32 221) Defendants have engaged in a pattern of illegal activity in that they have engaged
 in multiple financial transactions with the knowledge that the transactions were designed
 to conceal the true nature of having violated every noise ordinance in Hawaii and making

1 a mockery of every single Hawaii Court and the Hawaii legislature and the Hawaii Health
2 Department's edicts. Plaintiffs will unearth the complex schemes through intensive
3 discovery and will file motions to compel with extreme sanctions for any discovery that
4 is perjurious or withheld.
5
6

7
8 222) Plaintiff asks the Honorable Court for \$100,000 a day in sanctions for every
9 answer not forthcoming.
10
11

12 223) Despite the complete and total unprofessional conduct, Defendants have used the
13 proceeds of their illicit activities to fund their enterprise in direct violation of the RICO
14 statute.
15
16

17 224) Plaintiffs have been enormously injured by these violations. Their unprofessional
18 and outrageous conduct is only steps removed from criminal. Plaintiffs may also file a
19 criminal complaint with the U.S. Attorney's Office. The amount of the resulting damages
20 will be proven during discovery and during the trial.
21
22

23
24
25
26
27 **COUNT 14**
28 **WRIT OF ATTACHMENT**

225) Plaintiffs repeats and realleges each and every allegation contained in paragraphs
above as if fully set forth herein.

226) Plaintiffs will be seeking an Ex Parte Writ of Attachment against Defendant's
business, personal houses, personal bank accounts, cars, boats, and any and all personal
assets based on HRS that allows the Plaintiffs within a lawsuit to seek a "prejudgment
writ of attachment" by which it can freeze certain assets of a debtor/defendant.

227) Certain criteria must be met by the creditor for it to succeed in obtaining a
prejudgment writ of attachment:

- 1 - The underlying claim by the Plaintiffs must be based upon a oral or written contract;
2
3 - The Plaintiffs must show the “probable validity” of the claim against the defendant;
4
5 and
6 - The defendant must be a business;

7
8 Plaintiffs is informed and believes that the prejudgment writ of attachment is valid in this
9 case, all of the elements and requirements proved by a preponderance of the evidence, and
10 will seek an immediate writ by this Court after the suit commences.

11
12 350. This includes freezing any assets and future assets until the final outcome and/or
13 Plaintiffs prevails.

14
15 351. Plaintiffs requests any and all assets moved to family members or outside the United
16 States be frozen from May 2022.

17
18 352. If Plaintiffs prevails at trial, he will seek a garnishment from any business Defendants
19 try to start because they will obviously try to file for bankruptcy. Plaintiffs will file an
20 Adversary Proceeding blocking any attempt to file for bankruptcy and any new business
21 will owe the judgment to the Plaintiffs regardless of the name.
22
23

COUNT 15: **PRELIMINARY INJUNCTION**

228) Plaintiffs repeats and realleges each and every allegation contained in paragraphs
above as if fully set forth herein.

229) Plaintiffs ask the Court to:

- 1) Immediately stop any and all noise on the golf course until 8 am**
- 2) Stop the daily noise and only allow them to garden every other day or once a week;**
- 3) Freeze all assets of Defendants**

4) Stop all illegal gas-powered equipment

COUNT 16

PUNITIVE DAMAGES

132. Plaintiffs restate and incorporate the preceding paragraphs as though fully

set forth herein.

133. The misconduct of Defendants individually and collectively, warrants

the imposition of punitive damages.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and

severally, as follows:

- a. For such special damages as will be proven at trial;
 - b. For treble damages;
 - c. General damages: the amount of general damages is within the minimum jurisdictional limits of this Court; Punitive and exemplary damages against Defendants.
 - e. For prejudgment interest at the statutory rate from May 15, 2019 until judgment is entered;
 - f. For attorneys' fees and costs of suit; and
 - g. For such other relief as this Court may deem just and equitable.

DAMAGES

134. Plaintiffs restate and incorporate the preceding paragraphs as though fully

set forth herein.

1 135. The misconduct of DEFENDANTS, individually and collectively, was a
2 substantial factor in Plaintiffs experiencing extreme conscious pain and extreme suffering
3 in both the noise and air pollution.
4

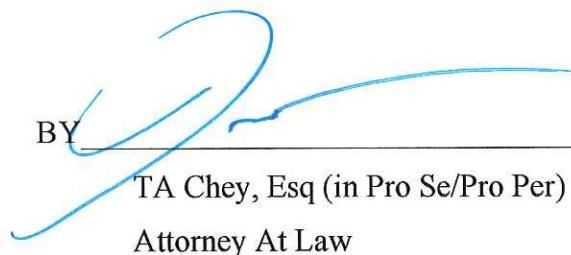
5 136. The misconduct of Defendants, individually and collectively, is a
6 substantial factor in Plaintiffs losing the enjoyment of life he would have experienced in
7 the future; sustaining and incurring a loss of earnings and loss of future excess earnings,
8 loss of benefits and loss of future benefits, funeral and burial expenses, loss of enjoyment
9 of life and other special and general damages.
10

11 137. The misconduct of Defendants, individually and collectively, is a
12 substantial factor in Plaintiff's sustaining non-economic damages as
13 described in H.R.S. § 663-8.5 and damages described in H.R.S. § 663-3.
14

15 138. Plaintiffs seeks all damages available by law, including but not limited to property
16 damage, subject to those claims presented at the time of trial.
17

18 139. Plaintiffs have experienced great worry and distress as a result of DEFENDANTS'
19 failure to accept full responsibility for his harms and losses.
20

DATED: May 3, 2022



BY _____
TA Chey, Esq (in Pro Se/Pro Per)
Attorney At Law